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11 Attorneys for USACM Liquidating Trust

12 **UNITED STATES BANKRUPTCY COURT**
13 **DISTRICT OF NEVADA**

14 In re:

15 USA Commercial Mortgage Company,

16 Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF
OMNIBUS OBJECTION OF USACM
TRUST TO PROOFS OF CLAIM
BASED UPON INVESTMENT IN
THE BUNDY CANYON (\$2.5
MILLION) LOAN**

17 Hearing Date: August 30, 2011

18 Hearing Time: 10:30 a.m.

19 Estimated Time for Hearing: 10 minutes

20 I, Geoffrey L. Berman, declare under penalty of perjury:

21 1. I am an adult person competent to testify in court.

22 2. I make this declaration based upon my personal knowledge, and upon the
23 records USA Commercial Mortgage Company.

24 3. I am the Trustee of the USACM Liquidating Trust (“USACM Trust”),
25 which is an entity created by the Debtors’ Third Amended Joint Chapter 11 Plan of
26 Reorganization (“Plan”), in the jointly-administered bankruptcy cases, In re USA
Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States
Bankruptcy Court for the District of Nevada.

1 4. USACM circulated an Offer Sheet to prospective Direct Lenders soliciting
2 funding for an acquisition and development loan to a borrower identified as “Bundy
3 Canyon Land Development, LLC.” A copy of the Offer Sheet is attached hereto as
4 **Exhibit B** and incorporated by this reference. The Offer Sheet stated that the Borrower
5 was a joint venture between USA Investment Partners and three individuals, Dave Fogg,¹
6 Chris Pederson, and Kevin Everett. *Id.* The total loan amount proposed was \$2,500,000.
7 *Id.* The Offer Sheet described the investment as a “First Trust Deed Investment” and
8 noted that the investment would be secured by a first deed of trust on approximately 21.6
9 acres of property to be developed into approximately 85 lots, located on Bundy Canyon
10 Road in Riverside County, California, near the city of Murietta. *Id.* The loan to value
11 ratio was 29% based on the sell out price for the approved mapped lots.² *Id.*

12 5. On May 2, 2005, Borrower made and delivered to various lenders,
13 including the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by
14 Deed of Trust” (the “Note”) and a Loan Agreement. The Note and Loan Agreement
15 provided for a loan of up to \$2,500,000, with an initial loan in the amount of \$2,000,000.
16 *Id.* Pursuant to the Loan Agreement, the loan was intended to acquire a portion of the
17 real property, to refinance a portion of the real property, and to pay certain overhead of
18 Borrower’s overhead expenses. *Id.* The Note was secured by a “Deed of Trust,
19 Assignment of Rents, Security Agreement and Fixture Filing” (the “Deed of Trust”) from
20 the Borrower in favor of the Direct Lenders that was recorded in the official records of
21 Riverside County, California on May 27, 2005 at Instrument Number 20050424762, as
22 were subsequent amendments to the Deed of Trust to secure subsequent loan advances.

23
24 ¹ David Fogg’s involvement in the transfer of funds between the USA Capital Diversified Trust Deed Fund
25 and USA Investment Partners was addressed in separate litigation. That litigation was settled and that
settlement was approved by this Court.

26 ² The Trustee has been unable to locate an appraisal for this loan and it does not appear that one was ever
obtained.

1 6. The Note was also supported by a guaranty from Tom Hantges and Joseph
2 Milanowski.

3 7. The USACM “Loan Summary” dated July 31, 2006 and filed in this case
4 shows that Borrower was “Non-Performing” on the Note as of July 31, 2006. During this
5 bankruptcy case through the transfer of servicing to Compass, USACM treated the Direct
6 Lenders with respect to any interim payments by the borrower in accordance with this
7 Court’s orders and the confirmed Plan.

8. Because the Borrower included USA Investment Partners L.P., an affiliate of
9 USACM, I believe there was the potential for a conflict of interest in the manner in which
10 USACM brokered and serviced this loan.

11 I declare under penalty of perjury that the foregoing is true and correct.

12 Dated: July 27, 2011

/s/ Geoffrey L. Berman
Geoffrey L. Berman

16 Copy of the foregoing mailed (without
17 Exhibits) by first class postage prepaid
18 U.S. Mail on July 27, 2011 to
All investors listed on Exhibit A
Attached.

s/ Matt Burns
Matt Burns, Paralegal